

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2009-053747

08/15/2011

HONORABLE MICHAEL D. GORDON

CLERK OF THE COURT
M. MINKOW/C. Vigil
Deputy

IN RE THE MATTER OF
JIMMY R LOPEZ

JOSEPH E COLLINS

AND

LAURA E BATTAGLIA

DAVID LEE GOLDFARB

**EVIDENTIARY HEARING AND RULING
MATTERS UNDER ADVISEMENT
TELEPHONIC REVIEW HEARING SET**

Prior to the commencement of the hearing, Petitioner's exhibits 1 through 8, Respondent's exhibits 9 through 66 and Petitioner's exhibits 67 through 80 were marked for identification.

9:10 a.m. Courtroom 108 NE. This is the time set for Evidentiary Hearing Re: Respondent's Petition to Modify Custody, Parenting Time and Child Support, filed April 15, 2011, and Petitioner's Petition to Modify a Child Support Order, filed March 28, 2011. Petitioner/Father is present and represented by above-named counsel. Respondent/Mother is present and represented by above-named counsel.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Jimmy Lopez, Laura Battaglia, Teres Golay, Brian Menard, Frank Magarelli and connie Lopez are sworn.

Respondent invokes Rule of Exclusion of Witnesses.

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Argument is heard on Respondent's objection to Petitioner's testimony, witnesses and exhibits, filed August 12, 2011.

IT IS ORDERED that the hearing shall go forward. Respondent is granted leave to articulate objections on a witness by witness and exhibit by exhibit basis.

THE COURT NOTES that, although Petitioner filed his petition first, the core issue is Respondent's request for a change of physical custody and parenting time, and, therefore, the Court will allow Respondent to put on her case first.

Respondent's case:

Frank M. Magarelli testifies.

Dr. Jeffrey Proudfoot is telephonically sworn and testifies.

The witness is excused.

Frank M. Magarelli resumes the stand and testifies further.

The witness is excused.

Brian Menard testifies.

Respondent's exhibits 22, 23 and 24 are received in evidence.

The witness is excused.

10:31 a.m. Court stands at recess.

10:44 a.m. Court reconvenes with the parties and counsel present.

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Dr. Mark Webb is telephonically sworn and testifies.

Respondent's exhibits 34, 35 and 37 are received in evidence.

The witness is excused.

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Laura Battaglia testifies.

Respondent's exhibits 25, 26, 27, 33 and 31 are received in evidence.

12:03 p.m. Court stands at recess.

1:54 p.m. Court reconvenes with the parties and counsel present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Dr. James Gough is telephonically sworn and testifies.

Respondent's exhibit 38 is received in evidence.

The witness is excused.

Laura Battaglia resumes the stand and testifies further.

Respondent's exhibits 12, 29, 32, 51, 41 through 46, 47, 39, 40, 65, 66, 49, 13, 48, 17, 19, 20 and 36 are received in evidence.

Petitioner's exhibit 77 is received in evidence.

3:37 p.m. Court stands at recess.

3:54 p.m. Court reconvenes with the parties and counsel present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Laura Battaglia resumes the stand and testifies further.

Respondent rests.

Petitioner's case:

Jimmy Lopez testifies.

Respondent's exhibit 30 is offered, but not received.

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Respondent's exhibit 81 is marked for identification and received in evidence.

Both sides rest.

With respect to the unreimbursed medical expenses,

IT IS ORDERED that within 14 days of this date Petitioner shall provide Respondent with a list of any expenses he objects to and why. The presumption will be that the \$3,952.29 is the correct amount.

With respect to the expenses to which Petitioner does not object,

IT IS ORDERED that if those expenses are owed to the provider, Petitioner must make immediate arrangements to pay those bills directly to the provider. If those expenses are owed to Respondent, Petitioner shall repay those expenses to Respondent within 45 days from this date.

With respect to the expenses Petitioner has an objection to, he shall let Respondent know why he objects. If the objection is a matter of documentation, Respondent shall respond with the appropriate documentation within 7 days of this date. The issue of the contested expenses may be raised before the Court at a review hearing, which will be set today. If Petitioner makes an unreasonable objection, the Court will order that any attorney's fees with respect to the review hearing on those issues will be paid by Petitioner.

IT IS FURTHER ORDERED that Petitioner shall pay Dr. Ronn Lavit's fees for testifying as Parenting Coordinator in the sum of \$340, to be paid within 45 days of this date.

With respect to the tax exemption issue,

IT IS ORDERED that for the tax years 2011 and 2012 Respondent/Mother will have those years for tax exemptions and continue thereafter with Respondent to have the tax exemption in even years and Petitioner to have the tax exemption in odd years.

IT IS FURTHER ORDERED denying any request for contempt that had been filed.

IT IS FURTHER ORDERED that all other matters will be deemed under advisement.

With respect to the request for name change, the Court will address the issue of the name change in its ruling, or make a referral to ADR or appropriate department for review.

Discussion ensues regarding the exchange of the minor child for tonight.

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Father's has designated his representative to be paternal grandmother.

IT IS FURTHER ORDERED setting a Telephonic Review Hearing on October 12, 2011 at 8:30 a.m. with respect to any unresolved reimbursement requests. (Allotted time: 30 minutes)

There being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of the Court,

IT IS ORDERED that the Clerk permanently release all exhibits not offered in evidence to the counsel/party causing them to be marked, or to their written designee. Counsel/party shall have the right to re-file relevant exhibits as needed in support of any appeal. Re-filed exhibits must be accompanied by a Notice of Re-filing Exhibits and presented to the Exhibits Room of the Clerk's Office. The Court's exhibit tag must remain intact on all re-filed exhibits.

IT IS FURTHER ORDERED that counsel/party or written designee take immediate possession of all exhibits referenced above.

ISSUED: Exhibit Release Form

5:45 p.m. Hearing concludes.

IT IS ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/s/ Michael D. Gordon

MICHAEL D. GORDON
JUDGE OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.